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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Feasibility of a global fund to enhance the capacity of stakeholders to implement the Guiding Principles on Business and Human Rights

Report of the United Nations High Commissioner for Human Rights

Summary

In its resolution 26/22, the Human Rights Council requested the United Nations High Commissioner for Human Rights to consult with States and relevant stakeholders to develop concrete options and proposals to inform a decision on whether to create a global fund to enhance the capacity of stakeholders to implement the Guiding Principles on Business and Human Rights, and to submit a report thereon to the Council at its twenty-ninth session.

The present report, prepared pursuant to that request, provides a summary of stakeholder views on issues relating to the scope and structure of such a fund. The High Commissioner recommends further steps for consideration by the Council and proposes that the Office of the United Nations High Commissioner for Human Rights be mandated to develop a pilot project to test the viability of a capacity-building fund in this area, subject to available resources.

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I. Introduction

1. In its resolution 21/5, the Human Rights Council recognized the importance of building the capacity of all actors to better manage challenges in the area of business and human rights and requested the Secretary-General to undertake a study to explore the feasibility of establishing a global fund to enhance the capacity of stakeholders to advance the implementation of the Guiding Principles on Business and Human Rights.

2. The main findings of the feasibility study were included in the report of the Secretary-General on the challenges, strategies and developments with regard to the implementation of resolution 21/5 by the United Nations system, including programmes, funds and agencies (see A/HRC/26/20, paras. 61–80). As a result of the consultations undertaken for the feasibility study, it was found that there was broad consensus among Governments and business and civil society representatives on a new fund to support the implementation of the Guiding Principles and that such a fund would be a useful mechanism.

3. In its resolution 26/22, the Council welcomed the report of the Secretary-General and requested the United Nations High Commissioner for Human Rights to consult with States and relevant stakeholders to develop concrete options and proposals to inform a decision on whether to create such a fund, and to submit a report thereon to the Council at its twenty-ninth session. The present report was prepared pursuant to that request and should be read in conjunction with the feasibility study (A/HRC/26/20/Add.1). In the preparation of the present report, the Office of the United Nations High Commissioner for Human Rights (OHCHR) invited all Member States and relevant stakeholders to provide views and recommendations on possible options for a new capacity-building fund to advance the implementation of the Guiding Principles. OHCHR also presented an overview of responses received and discussed potential options for next steps at an informal consultation with Member States on 9 April 2015.

4. With respect to the scope of a potential fund, OHCHR requested stakeholders to provide views on the relative importance of initial priorities identified in the first round of consultations, including on: (a) providing support to civil society, human rights defenders and organizations that assist those whose human rights are affected by business activities to build their capacity to advocate effectively at the international, national and local levels and to assist victims in accessing remedy; (b) providing support to States with limited capacity to implement the Guiding Principles, including, for example, by supporting government processes to develop national action plans on business and human rights; and (c) providing support to civil society, business networks, trade unions, think tanks, national human rights institutions and other organizations that conduct awareness-raising and training activities.

5. On the matter of the potential structure of a new fund, OHCHR requested views on options that could most effectively advance implementation and meet capacity-building needs concerning the Guiding Principles at all levels of governance and across all relevant stakeholder groups, as recommended in the feasibility study. Fund models for consideration could include: (a) a structure similar to other voluntary trust funds on human rights issues to be administered by the Secretary-General, with OHCHR providing secretariat services, including by pre-screening applications, monitoring and evaluating the use of grants and providing support to the board of trustees; (b) a multi-party trust fund structure with a policy body comprising national authorities from different regions, OHCHR and other relevant United Nations agencies, to set priorities and take decisions on grants to be awarded and administered through the Multi-Partner Trust Fund Office of the United Nations Development Programme; and (c) establishment of a legally independent

organization with international, non-profit status or an existing organization tasked with administering the fund. Such an organization would be accountable to the Secretary-General and would establish a multi-stakeholder board comprising representatives from donor and recipient countries, as well as the private sector and civil society, which would be responsible for setting priorities and awarding grants, as well as for overseeing and monitoring programme implementation. The multi-stakeholder board would also be responsible for securing effective secretariat support for project screening, funds disbursement, monitoring and evaluation, and legal and financial management.

6. The present report seeks to advance consideration by the Human Rights Council on whether to create a new capacity-building fund for the implementation of the Guiding Principles. The following section summarizes the perspectives of stakeholders who provided written submissions for the most recent consultation process. Based on those submissions as well as on the Secretary-General's feasibility study, the High Commissioner proposes further steps for consideration by the Human Rights Council at its twenty-ninth session.

II. Summary of stakeholder views

7. Only a small number of responses were received in this round of consultations (four from States and two from civil society, one of which was a joint submission). It should be recalled that, although the consultations for the feasibility study had indicated wide support for the establishment of a new fund for the implementation of the Guiding Principles and that such a fund could be a useful mechanism, there was also a diversity of views concerning the priorities and governance arrangements for such a fund. The current consultations therefore sought to elicit additional views on issues relating to the scope and structure of a new fund.

A. Stakeholder views on the scope of a new fund

8. In the feasibility study it was noted that, given the importance placed by all actors on the interrelated nature of the three pillars of the "Protect, Respect and Remedy" Framework, it seemed evident that the mandate for such a fund should be broad, with the ability to support projects to advance the implementation of and the capacity-building needs concerning the Guiding Principles at all levels of governance and across all relevant stakeholder groups. It was also noted that there appeared to be a widely shared view that a new fund should be designed in a way that would encourage further multi-stakeholder cooperation (see A/HRC/26/20/Add.1, para. 50). In the consultation process undertaken for the feasibility study, there was broad consensus among stakeholders that a new fund should not prioritize the provision of resources directly to the United Nations Secretariat and agencies to carry out capacity-building activities in the area of business and human rights. While support to civil society actors was widely viewed as being a key priority, there was a much broader range of views concerning other potential actors and activities that such a fund might support.

9. Those views were broadly reaffirmed in the most recent stakeholder submissions, which offered a number of additional recommendations as well. In one submission, it was proposed that a new fund should allow sufficient scope for the identification of regional priorities. It was suggested that stakeholders in some regions might benefit more from activities such as awareness-raising or capacity-building, for example, to advise small and medium-sized businesses on corporate human rights due diligence processes, whereas other regions might view the provision of support to communities in defending their rights vis-à-vis companies as a more immediate priority. In another submission, it was suggested that a

fund in the area of business and human rights should be flexible enough to allow for the development of region-specific tools for enhancing corporate human rights due diligence, as well as support communities that have been negatively affected by corporate activities. In yet another submission, it was proposed that a fund should support implementation activities linked to the establishment of national action plans on business and human rights, while noting that civil society activities were, in some cases, part of such initiatives.

10. In other submissions, specific priorities were proposed, including: (a) increasing the capacity of indigenous peoples and other marginalized stakeholders on issues relating to business and human rights; (b) facilitating greater access to relevant reports and documents, including through translation into national and indigenous languages; and (c) ensuring broader participation of indigenous peoples and marginalized groups at relevant United Nations and related meetings. In one submission, the importance of supporting human rights defenders in carrying out their work was reiterated, in particular with regard to documenting the impact of corporations and ensuring access to effective remedies.

11. Some stakeholders proposed that a new fund should prioritize strengthening the capacities of the most disadvantaged groups, including indigenous peoples, through activities such as: (a) training for indigenous peoples and disadvantaged groups on the contents and utilization of the Guiding Principles; (b) activities, designed in partnership with indigenous peoples, for State and private actors relating to indigenous peoples' rights in the context of the business activities that have an impact on them; (c) research on the implementation of the Guiding Principles, including with a view to reviewing and improving existing implementation mechanisms; and (d) monitoring and documentation of cases of business activities that have had an impact on the rights of indigenous peoples and dissemination of reports for awareness-raising and advocacy purposes.

12. With respect to the duration of the project, funds and recipient profiles, in one submission it was proposed that the fund should prioritize multi-year capacity-building projects rather than shorter term, one-off projects or activities, and suggested that the fund could establish a budget range of $10,000–$50,000 for projects, including multi-year projects of one to three years' duration. In another submission, it was stressed that the fund should be accessible to a wide variety of organizations, including, as proposed in the feasibility study, civil society organizations, business networks, trade unions, think tanks, national human rights institutions and other organizations that conduct awareness-raising and training activities.

B. Stakeholder views on the structure of a new fund

13. The consultations undertaken for the feasibility study highlighted a diversity of stakeholder views on the most effective structure of a fund aimed at building capacity in the area of business and human rights. As noted in the study, in a large majority of submissions it was indicated that OHCHR should be a key actor in administering such a fund. Some stakeholders stated that the Working Group on the issue of human rights and transnational corporations and other business enterprises should play a central role in shaping the fund's strategic approach. In a number of submissions, the importance of ensuring an efficient governance structure and limiting administrative costs was stressed (see A/HRC/26/20/Add.1, para. 39).

14. Similarly, the consultation process for the present report did not result in a clear consensus on the most desirable governance arrangement for a fund in the area of business and human rights. For example, although some States indicated a preference for a traditional voluntary trust fund that relied on existing structures, others focused on the importance of simple and effective procedures that would not discourage potential applicants, in particular civil society representatives, from seeking support through such a

fund. One State suggested that a public-private partnership model, supported by oversight from international human rights bodies or expert teams, could be more flexible, encourage multi-stakeholder cooperation and effectively manage the fund. Another State favoured a structure wherein governance would be provided by involving national authorities from all regions, as well as OHCHR and other United Nations bodies.

15. Civil society representatives suggested that a board of trustees on which rights holders would be represented and that would be administered by OHCHR would be most appropriate for a new fund in the area of business and human rights. In a joint civil society submission, it was noted that experience with existing funds, such as the United Nations Voluntary Fund for Indigenous Peoples, indicated that fund governance should, in this case, focus on: (a) establishing a procedure for the selection of the members of a board of trustees to ensure familiarity with potential applicants within their constituency, while safeguarding the independence of collective decision-making on grant approvals; (b) developing and publishing eligibility criteria on who may seek support through the new fund — in that context, it was suggested that organizations and groups, in particular indigenous peoples, should not be required to be legally registered in their countries of origin in order to obtain funds; and (c) ensuring that an effective pre-screening procedure is in place to review the legitimacy and past performance of eligible organizations.

16. One civil society stressed the importance of establishing a governance structure that would help secure local and multi-stakeholder support for fund-related activities. It was suggested, in that context, that an independent organization with a multi-stakeholder board responsible for setting priorities, awarding grants, and overseeing and monitoring programme implementation would represent the structure most likely to effectively advance implementation and meet capacity-building needs concerning the Guiding Principles at all levels of governance and across all relevant stakeholder groups.

III. Conclusion and recommendations

17. **In the light of the foregoing summary of stakeholder views, the High Commissioner provides the following conclusion and makes recommendations on the next steps to be considered by the Human Rights Council during its twenty-ninth session.**

18. **Firstly, the High Commissioner wishes to stress that any decisions taken by the Council on this issue should be made in the light of broader human rights capacity-building and technical assistance trends, as well as the current overall funding situation of OHCHR and the wider United Nations human rights system. In that context, it should be recalled that demands for human rights assistance continue to increase exponentially, yet, owing to a lack of resources, OHCHR has been obliged to significantly reduce its programme of activities for 2015. That reality clearly needs to be considered in further discussions by the Council on the viability of a new fund to strengthen the capacity of stakeholders to implement the Guiding Principles on Business and Human Rights.**

19. **Secondly, the High Commissioner wishes to stress that, as noted in the feasibility study, any decision concerning a new fund in the area of business and human rights should be made in coordination with the Working Group on the issue of human rights and transnational corporations and other business enterprises. Given its mandate to identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles, as well as its role in providing support for efforts to promote capacity-building and the use of the Guiding Principles by all**

actors, it would be important to involve the Working Group in shaping the strategic approach of a new fund.

20. Thirdly, the High Commissioner wishes to reiterate that there appears to be broad agreement among all stakeholders that a new fund would be a useful mechanism to advance the implementation of the Guiding Principles, and that such a fund should be able to accept financial contributions from any actor, including States, businesses, philanthropic organizations and individuals. Equally important, and as noted in the conclusions to the feasibility study, is the broad consensus on the importance of establishing appropriate safeguards for the legitimacy and independence of any new funding arrangement in this area, including by ensuring full transparency of donors and the allocation of resources to individual projects.

21. Those points of consensus constitute a useful foundation upon which further actions by the Council can be taken. However, there remains a diversity of views on the priority actors and activities to be supported by a new fund, as well as the most effective structure for ensuring maximum impact. With those aspects in mind, in addition to the current financial challenges noted above, it would appear that a useful next step would be to create the conditions for multi-stakeholder testing of how capacity-building support in this area could be delivered in practice. Such a step would encourage further dialogue and the collection of additional information, including with respect to the degree of donor interest in supporting capacity-building in this area on a more permanent basis.

22. Given the above considerations, the High Commissioner recommends that the Human Rights Council consider the following:

(a) In order to further inform the Council's decision on whether to create a permanent mechanism to support stakeholder capacity for implementing the Guiding Principles on Business and Human Rights, OHCHR should be requested to develop a pilot project to test the viability of a capacity-building fund in this area. It should be stressed, however, that a pilot project can only be implemented if sufficient resources, to be determined by OHCHR, are received;

(b) As part of the pilot project, OHCHR should be mandated, in collaboration with the Working Group on human rights and transnational corporations and other business enterprises and other relevant United Nations system partners, to provide financial support, subject to available resources, for a representative number of pilot capacity-building projects concerning implementation of the Guiding Principles, and to report to the Council in three years on the findings arising from and the lessons learned from the pilot project;

(c) The High Commissioner should be invited to consult with a multi-stakeholder group of individuals and organizations representing all relevant constituencies to provide OHCHR with strategic guidance during the pilot project, including in the development of eligibility criteria for pilot capacity-building projects. Such consultations could be initiated during the fourth annual Forum on Business and Human Rights, to be held in November 2015 and to be organized in coordination with the Working Group. Individuals and organizations involved in the consultations should not have authority with respect to decision-making on which projects to support or on matters relating to who can contribute or benefit from funding. Equally, private and public donors to the pilot capacity-building projects should not have a direct role in decisions concerning which projects to support, so as to avoid any conflict of interest.

23. Given the results of the consultations to date and the importance that all partners have placed on the interrelated nature of the three pillars of the "Protect,

Respect and Remedy" Framework and the Guiding Principles, the Council should confirm that the mandate for a pilot project should be broad, with the ability to support projects to advance the implementation and meet capacity-building needs concerning the Guiding Principles at all levels of governance and across all relevant stakeholder groups, excluding United Nations agencies or programmes. Priority should be given to all key stakeholder groups in developing countries, for example, by:

(a) Supporting civil society organizations with limited resources to increase the capacity of local communities and marginalized stakeholders on issues relating to the implementation of the Guiding Principles;

(b) Developing multi-stakeholder cooperation focusing on assisting small and medium-sized companies in implementing their responsibilities in accordance with the Guiding Principles;

(c) Assisting Governments that are developing national business and human rights action plans.